

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

STEPHEN L. WESTON

Claimant

VS.

BLUE VALLEY TRUCKING, INC.

Respondent

AND

CIGNA PROPERTY & CASUALTY INSURANCE

Insurance Carrier

Docket No. 213,605

ORDER

Respondent requested Appeals Board review of a preliminary hearing Order entered by Administrative Law Judge Steven J. Howard dated August 20, 1996.

ISSUES

The single issue raised by respondent for Appeals Board review is whether claimant suffered an accidental injury that arose out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The Administrative Law Judge ordered respondent to provide medical treatment for an injury to claimant's right knee through Dr. Kenneth Wertzberger. Respondent argued that claimant's need for medical treatment was not due to an accident that occurred at work on June 24, 1995. Respondent contended the necessity for medical treatment was for aggravating injuries that occurred to claimant's right knee while claimant continued to work for the respondent

after June 24, 1995, and until he voluntarily quit his employment with the respondent in September 1995.

Claimant established through his testimony that he injured his right knee when he slipped on wet concrete that caused his right knee to hyperextend forward and twist on June 24, 1995. Claimant admitted into evidence contemporaneous medical records that indicated claimant was treated for a right knee injury at Walk-In Health Care of Olathe on June 24, 1995. Claimant also returned there on June 26, 1995, for further treatment. Claimant did testify that he fell numerous times on his right knee after the June 24, 1995 accident while performing his regular duties for the respondent. Claimant testified his right knee became more symptomatic after those falls. However, claimant also established that the increased symptoms were temporary, lasting a day or two, and then the symptoms would return to the same level as they were immediately after the June 24, 1995 accident.

Medical records of Kenneth L. Wertzberger, M.D., an orthopedic surgeon in Lawrence, Kansas, were admitted into evidence at the preliminary hearing. Dr. Wertzberger had been treating claimant for a previous left knee injury not associated with this incident. In a letter to respondent's insurance carrier dated May 21, 1996, Dr. Wertzberger attributed claimant's need for an anterior cruciate reconstruction of the right knee to the accident that occurred while claimant was employed by the respondent in June 1995.

The Appeals Board finds the preliminary hearing record that contains the testimony of the claimant, coupled with Dr. Wertzberger's medical records, firmly establishes that claimant's current need for medical treatment for his right knee is due to the work-related accident that occurred on June 24, 1995, and not due to subsequent incidents occurring thereafter.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Steven J. Howard dated August 20, 1996, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

c: Derek R. Chappell, Ottawa, KS
Gary R. Terrill, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director